

## LAW AND THE ART WORLD

## Internet piracy and other copyright issues

By Bill Frazier ©2013

I have made the comment in past installments of these articles – and it's not original with me – that the internet is the biggest copy machine in the world. Anything posted on any of the social networks, such as Facebook, for example, becomes public information. The individual posting the information may not intend it to be public, but that is the practical effect.

Posting is a form of broadcast or publication in the legal sense. Much the same applies to the content of websites. Certainly, one may copyright the images and the site itself, but once the content enters the ether of the internet, it is gone.

I have listened to different web-masters explain how the images are protected, but I have yet to see a site that cannot be copied or hacked.

Internet piracy is a tremendous problem for artists posting their images on the internet, either on their own websites or those of galleries. I sometimes think artists do not realize that once something is posted on the internet, it goes all over the world instantly. This includes many countries that do not honor our laws and treaties and civilized concepts of intellectual property rights. Of course, it will come as no surprise that such countries are the primary villains in the piracy of internet images.

The best I can advise is that if you have particular images that you absolutely do not want anyone else using, kept them off websites. At the same time, I do realize that the internet is a major marketing tool for many artists. Also, I understand that some artists are not concerned by the threat of piracy and copyright infringement.

There is pending in the U.S. House of Representatives the "Stop Online Piracy Act" (SOPA) H.B. 3261. It has not yet passed. It is designed to bolster the Digital Millennium Copyright Act passed in 1996 and provide additional law enforcement powers to government agencies in addressing piracy of intellectual property.

While there is much support for the bill's passage, there are also many opposed who believe that it will violate First Amendment rights. In any case, the issue is before Congress.

The U.S. Copyright Office has added a link on internet piracy on its website ([www.copyright.gov](http://www.copyright.gov)) and there is much information, pro and con, to be found on the internet about both of the above acts. I recommend also the Copyright Office website for much useful information on copyright issues generally, especially the frequently-asked-questions section. It even tells how to protect evidence of your sighting of Elvis!

**More scams**

Scams directed at artists and other business people continue to develop. A new one appears to come from London, seeks to share financial data for some unarticulated reason, and seems to be an attempt at money laundering.

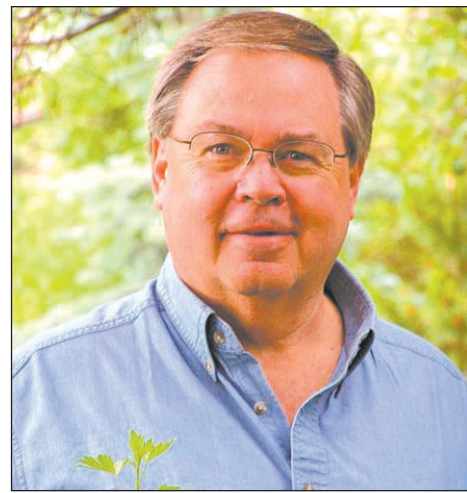
Another one, directed at art galleries and other nonprofit organizations, is from a woman seeking financial information to enable her to make donations to charitable organizations in the community. Again this appears to be an attempt at money laundering or some other nefarious activity. I doubt there is a legitimate intent to donate to charitable organizations.

I continue to encourage people to look at these solicitations from the standpoint of common sense and good judgment. As so many have cautioned over the years, if it sounds too good to be true, then it probably is.

**When in doubt, don't copy**

At nearly every seminar I teach, a participant will argue with me that he is entitled to use a certain percentage of another's work without it being an infringement, and that there is a formula allowing this use. That is not the case and there is no such formula as I have explained so many times in these articles.

I quote from the Copyright Office explanations: "Under the fair use doctrine of the U.S. copyright statute, it is permissible to use limited portions of a work, including quotes, for purposes such as commentary, criticism, news reporting, and scholarly reports. There are no legal rules permitting the use of a specific number of words, a certain number of musical notes, or percentage of a work [art]. Whether a particular use qualifies as fair use depends on all of the circumstances."



Bill Frazier

"The distinction between what is fair use and what is infringement in a particular case will not always be clear or easily defined. There is no specific number of words, lines, or notes [or portion of a work of art] that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission."

Following are standard criteria for determining fair use:

- The purpose and character of the use, including whether such use is of commercial nature or is for non-profit educational purposes;
- The nature of the copyrighted work;
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole;
- The effect of the use upon the potential market for, or value of, the original copyrighted work.

Perhaps I am more sensitive to the issue than the casual viewer, but I see so many copies of other work in art galleries and shows. Simply changing the color of a horse in a composition or substituting one Indian head-dress for another, or changing the color of a garment is not acceptable.

**Bill Frazier served a lengthy and invaluable tenure as chairman of the Montana Arts Council. He's in private practice in Big Timber, and can be reached at 406-932-5453 or [artlaw@mtintouch.net](mailto:artlaw@mtintouch.net). MAC thanks Art of the West for permission to reprint this series.**



23

**Find "Law and the Art World" online**

Bill Frazier's "Law and the Art World" series is also available online.

Now there is a quick and easy way to search within "Law and the Art World" for Frazier's legal perspective on specific topics. His articles have been regrouped into 11 categories under the title "Artists' Legal Advice." In these, Frazier discusses contracts, auctions, taxes, copyright issues and other subjects of recurring interest to artists.

Please bear in mind Frazier's important advice when using the resource:

"... Don't forget that the law is a dynamic and ever-changing thing."

To reach the collection of articles, go to the arts council website at [www.art.mt.gov](http://www.art.mt.gov) and select the *State of the Arts* link on the right side of the home page. That takes you to the *State of the Arts* page and a drop-down box under the "View articles for specific section"; then choose "Law and the Art World" from the drop-down menu.

## Tech Talk: Got a website? Now for e-marketing

By Mark Ratledge

Over the last three issues, I covered the steps of working with a Content Management System called WordPress in order to start a free – or inexpensive – website for yourself as an artist or for an arts organization.

Providing information about yourself or your organization on the web is, of course, the main reason for a website. Every year, the world becomes more and more technologically centric, and in order to keep up, you need to be on the web.

But very close behind providing information is another important reason many artists make the move to the web: to market and sell artwork.

But first, as I pointed out in past issues, there are differences between free WordPress.com and using the same software on your own server. In order to market and sell your work, or sell items to help support your organization, you need to self-host WordPress. That's because you need to use

one of several free "plug-ins" that will add e-commerce capabilities to your WordPress site, and the free version of WordPress at wordpress.com doesn't allow these types of plug-ins.



**Mark Ratledge is an information technology consultant. His website is [markratledge.com](http://markratledge.com).**

press.com doesn't allow these types of plug-ins.

The first thing to do after getting set up with WordPress on your own webhost is to install and learn to use an e-commerce plug-in. I suggest a plug-in called Woo Commerce, developed by a company called Woo Themes and available for free at [www.woothemes.com/woocommerce/](http://www.woothemes.com/woocommerce/).

Woo Themes also makes WordPress themes, but you don't need to

buy one in order to use the Woo Commerce plug-in.

The learning curve with an e-commerce system can be steep, but with this plug-in, you will be able to show images of your artwork, accept payments, calculate shipping and – if your work is not one of a kind – keep inventory, too.

You will be able to deal with tax structures in different states and countries and different shipping methods. And with other plug-ins, you can accept subscriptions with recurring payments, interface directly with UPS and FedEx for shipping options, and more.

In addition to the Woo Commerce plug-in, you will also need a payment processor that will handle credit- and debit-card transactions for you. But that can be one of many online companies that offer such services for a cut of the transaction amount, like PayPal and Google Wallet. Or ask your local bank if they offer third-party web payment systems.

Yes, learning an e-commerce system can be complex. But there is lots of help available in the forums at [wordpress.org/support](http://wordpress.org/support). And for Woo Themes products, go to [www.woothemes.com/support/](http://www.woothemes.com/support/).

The bottom line is that with some work to get set up and with the help of WordPress and Woo Commerce, you will be able to market, sell and ship your own artwork to anyone right from your website.

**Next issue: Selling art-inspired "branded" products on the web**